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Message Text

PAGE 01 STATE 257608
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AMEMBASSY DUBLIN
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AMEMBASSY ROME
AMEMBASSY COPENHAGEN
AMEMBASSY THE HAGUE

C O N F I D E N T I A L STATE 257608

FOLLOWING REPEAT GENEVA 09083 ACTION SECSTATE INFO BRUSSELS
DATED OCT 22:

QTE: C O N F I D E N T I A L GENEVA 09083

BRUSSELS FOR USEEC

PASS STR ELECTRONICALLY FOR MIKE SMITH

E.O. 11652: GDS
TAGS: ETRD, EEC
SUBJECT: TEXTILES: EC BILATERAL NEGOTIATIONS

REF: A. BRUSSELS 14152, B. SMITH-PHELAN TELECON OCT 21

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1. REGRET COPIES EC'S "STANDARD DRAFT AGREEMENT" FORWARDED AS PER PARA 2 REF A HAVE NOT REACHED WASHINGTON. MTN AMB MCDONALD ARRIVING WASHINGTON OCT 24 IS HAND CARRYING COPY TO SMITH. FOLLOWING COMMENTS ARE KEYED TO RELEVANT ARTICLES THAT DRAFT.

2. DRAFT AGREEMENT, ON FACE OF IT, REPRESENTS SIGNIFICANT DEPARTURE FROM MOST OF BASIC PRINCIPLES OF EXISTING MFA; THIS WITHOUT REGARD TO FACT THAT DRAFT HAS NONE REPEAT NONE OF THE ESSENTIAL NUMBERS WHICH ARE, OF COURSE, YET

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TO BE NEGOTIATED AND WHICH WE AND OTHER COM.TEX/W/44 SUPPORTERS HAD EXPECTED TO BE YARDSTICK TO MEASURE "REASONABLENESS" OF EC'S DEPARTURE FROM EXISTING MFA.

3. INTERESTINGLY ENOUGH, ARTICLE 2 (IN 21 ARTICLE DRAFT) DEALS WITH HAND-LOOMED FABRICS, COTTAGE INDUSTRY AND FOLKLORE TEXTILE PRODUCTS. WHILE ART 2 PROVIDES, AS DOES MFA ART 12:3, FOR EXEMPTION THESE ITEMS, EXEMPTION IS MADE SUBJECT TO PROVISIONS OF PROTOCOL B. PROTOCOL B, IN TURN, APPEARS EFFECTIVELY PRECLUDE EXEMPTION MOST SUCH ITEMS WHICH HAD BEEN EXEMPTED BY MOST IMPORTING COUNTRIES (INCLUDING EC) UNDER MFA. PROTOCOL SPECIFIES THAT FABRICS MUST BE WOVEN ON LOOMS ACTIVATED "SOLELY BY HAND OR FOOT," THAT GARMENTS OR OTHER TEXTILE ARTICLES ON FOLKLORE ITEMS MUST BE PRODUCED "SOLELY BY HAND WITHOUT THE AID OF ANY MACHINE." EXPORTING COUNTRY IS TO CERTIFY COMPLIANCE WITH FOREGOING RULES AND, EVEN IF SO CERTIFIED, FINAL EXEMPTION IS DEPENDENT UPON IMPORTS BEING "ACCEPTED BY COMPETENT COMMUNITY AUTHORITIES AS HAVING BEEN MADE BY HAND." OBVIOUSLY, UNDER THESE RULES, THE INTENT AND PRACTICE OF MFA ART 12:3 IS FRUSTRATED AND REVERSED. U.S. REP UNDERSTANDS FROM SEVERAL SOURCES THAT IN INITIAL CONTACTS WITH INDIANS AND MALAYSIANS (BATIK), EC NEGOTIATORS INDICATED CONFIDENTIAL

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NO GIVE IN THESE RULES WITH RESULT THAT DELS BOTH THOSE COUNTRIES BROKE OFF TALKS ON THIS PARTICULAR ISSUE AND WENT HOME WITHOUT DISCUSSING OTHER ARTICLES.

4. IN DRAFT ART 3, THE COMMUNITY, VIS-A-VIS BILATERAL AGREEMENT COUNTRIES, UNDERTAKES: "TO SUSPEND QUANTITATIVE RESTRICTIONS CURRENTLY IN FORCE," "NOT TO INTRODUCE" NEW RESTRICTIONS UNDER GATT ART XIX OR ART 3 OF MFA AND TO "PROHIBIT" ANY NEW MEASURE HAVING AN EQUIVALENT EFFECT. THESE UNDERTAKINGS, HOWEVER, ARE ALL MADE CONDITIONAL ON THE PROVISIONS OF DRAFT ART 6 WHICH ESTABLISHES A COMPETITIVE PRICE CRITERION WHEREBY THE COMMUNITY ASSERTS ITS UNILATERAL RIGHT TO DETERMINE WHEN AN IMPORT IS PRICED "OUTSIDE THE NORMAL COMPETITIVE RANGE" (LOWER, OBVIOUSLY) AND TO REFUSE A REQUEST FOR AN IMPORT AUTHORIZATION WHEN SO FOUND REGARDLESS OF WHETHER THE IMPORT WAS WITHIN AN APPLICABLE QUOTA.

5. DRAFT ART 5 SETS UP PROVISIONS FOR CARRY FORWARD, CARRY OVER AND SWING. AS REGARDS SWING: SWING INSIDE AND INTO GROUP I (SENSITIVE ITEMS) APPEARS TO BE PROHIBITED; SWING INSIDE GROUPS II-VI WILL BE PERMITTED (APPARENTLY A RIGHT); BUT, SWING BETWEEN GROUPS II-VI IS SUBJECT TO CONSULTATIONS UNDER ART 17 WHICH GIVES EC UNILATERAL RIGHT TO DENY SWING IF NO AGREEMENT REACHED.

6. DRAFT ART 6 (MENTIONED PARA 4 ABOVE) IS, OF COURSE

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A RADICAL DEPARTURE FROM MFA. IT WOULD APPEAR TO PROVIDE EC WITH UNILATERAL RIGHT TO DENY ENTRY TO ANY PRODUCT COVERED BY AN AGREEMENT IF THE PRICE WAS NOT COMPETITIVE WITH EC PRICES. ONE WONDERS HOW, UNDER THIS PROVISO, ANY EXPORTING COUNTRY (OR THE EC, FOR THAT MATTER) WOULD SEE ANY PURPOSE OR NEED FOR A BIALTERAL AGREEMENT. THIS CONCEPT APPEARS TO HAVE BEEN TAKEN FROM THE SWISS PRICE SURVEILLANCE MECHANISM, WHICH, DUE TO THE HIGH LEVEL OF DISCIPLINE AMONG SWISS IMPORTERS, HAS NEVER FORCED SWISS
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GOVERNMENT TO REFUSE ENTRY OF GOODS AND THEREFORE HAS NEVER BEEN SUBJECT OF COMPLAINT BEFORE TSB. SHOULD SUCH A COMPLAINT HAVE BEEN BROUGHT BEFORE TSB, DECISION WOULD HAVE BEEN UNANIMOUS THAT SWISS SYSTEM WAS CLEAR VIOLATION OF MFA. EC PROPOSAL WILL BE SEEN AS SUCH BY ALL REPEAT ALL ITS NEGOTIATING PARTNERS.

6. DRAFT ART 7 PROVIDES FOR DOUBLE (IMPORT AND EXPORT) CONTROL. UNDERSTAND, HOWEVER, THAT AFTER HONG KONG NEGOTIATORS DECLARED THIS NON-NEGOTIABLE, EC WAS PREPARED EXCEPT HONG KONG FROM THIS PROVISIO
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7. DRAFT ART 8 DEALS WITH PROCEDURE FOR ESTABLISHMENT OF SPECIFIC LIMITS ON PRODUCTS NOT GIVEN SPECIFIC LIMITS IN THE AGREEMENT. WHILE A SPECIFIC FORMULA FOR ESTABLISHMENT NEW SPECIFIC LIMITS IN GROUP II IS PROVIDED (GLOBALIZATION), THE COMMUNITY RESERVES UNILATERAL RIGHT TO ESTABLSIH LIMITS IN OTHER GROUPS IN EVENT CONSULTATIONS DO NOT PRODUCE AGREEMENT. THIS DRAFT ARTICLE IS POORLY WRITTEN AND CONTAINS CONTRADICTIONS.

8. DRAFT ART 9 IS A RELATIVELY STRAIGHT-FORWARD PROVISION FOR EXCHANGE OF DATA ON A TIMELY BASIS.

9. DRAFT ART 10 PROVIDES THAT AGREEMENTS MAY BE UNILATERALLY AMENDED TO CONFORM TO CHANGES IN THE COMMUNITIES' CUSTOM TARIFF OR NIMEXE; THE COMMUNITY ONLY UNDERTAKING "TO SEEK" EQUITABLE AND MUTUALLY ACCEPTABLE ARRANGEMENTS SHOULD SUCH CHANGES ADVERSELY AFFECT QUANTITATIVE LIMITS ESTABLISHED IN DRAFT ANNEX I.

10. DRAFT ART 11 IS A ROUTINE SPACING PROVISION.
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11. DRAFT ART 12 IS AN "UNDUE CONCENTRATION" PROVISION WITH TEETH IN IT. IF THE COMMUNITY DEEMS SHIPMENTS ARE CAUSING "A RISK OF MARKET DISTORTION" THEY MAY REQUEST CONSULTATIONS UNDER ART 17 WHERE, IF NO MUTUALLY AGREE-

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ABLE SOLUTION IS REACHED, THE EC MAY UNILATERALLY REFUSE IMPORT AUTHORIZATIONS.

12. DRAFT ART 13 PROVIDES FOR REALLOCATION OF QUOTA UNUSED IN ONE MEMBER STATE TO ANOTHER MEMBER STATE. THIS MAY BE DONE "IN ACCORDANCE WITH THE PROCEDURES IN FORCE IN THE COMMUNITY" (PROCEDURES NOT DEFINED) UPON REQUEST OF AN EXPORTING COUNTRY. THE EC ONLY UNDERTAKES "TO REPLY TO THE REQUEST"; THERE BEING AN IMPLIED UNILATERAL RIGHT TO ARBITRARILY DENY SUCH A REQUEST.

13. DRAFT ART 14 PROVIDES FOR REVIEW OF QUANTITATIVE LIMITS IN GROUP I AFTER TWO YEARS, WITH "POSSIBILITY" OF ADJUSTING UPWARD OR DOWNWARD CONSONANT WITH EC CONSUMPTION TRENDS. THERE WOULD APPEAR TO BE NO CLEAR RIGHT INVOLVED HERE EITHER FOR THE COMMUNITY OR THE EXPORTING COUNTRY.

14. DRAFT ART 15 IS DESIGNED TO PROTECT TO EXTENT POSSIBLE EXISTING TRADE PRACTICES AND TRADE FLOWS. SHOULD PROBLEMS ARISE, PARTIES ARE TO CONSULT UNDER ART 17, WHERE IF NO AGREEMENT REACHED, EC CAN IMPOSE UNILATERAL SOLUTIONS.

15. THE INTENT OF DRAFT ART 16 IS NOT CLEAR. IT CONTAINS ONE OF THE THREE REFERENCES TO THE MFA IN THE ENTIRE DRAFT. IT WOULD APPEAR THAT THE PURPOSE WOULD BE TO AVOID RECOURSE TO THE TSB, AN INTENT WHICH EC NEGOTIATORS HAVE CONSISTENTLY ESPOUSED.

16. DRAFT ART 17 HAS BEEN DISCUSSED ABOVE. IT IS A CONFIDENTIAL

GENERAL CONSULTATION PROVISION WHICH PERMITS, IN ABSENCE AGREEMENT, UNILATERAL DECISIONS BY EC.

17. DRAFT ART 18 ALSO CONTAINS A REFERENCE TO THE MFA AND ITS INTENT IS AS UNCLEAR AS THE REFERENCE IN ART 16. IF THE COMMUNITY IS SUCCESSFUL IN NEGOTIATING AGREEMENTS GOVERNED BY THE PROVISIONS OF THIS DRAFT, THERE WOULD, INDEED, BE FEW, IF ANY, GOVERNING PROVISIONS LEFT IN THE MFA.

18. DRAFT ART 19 DEALS WITH APPLICABILITY TO "TERRITORIES," WHICH, IN THE ABSENCE OF DEFINITION, LEAVES MEANING THIS ARTICLE UNCLEAR.

19. DRAFT ARTICLE 20 DEFINES THE TERM OF THE AGREEMENT: FIVE YEARS FROM JANUARY 1, 1978. PARA 3 OF THIS ART PROVIDES AN INTERESTING ALTERNATIVE: "PROPOSE" AMENDMENT OR "DENOUNCE" THE AGREEMENT. THE DRAFTERS OBVIOUSLY DIDN'T CONSULT THEIR TREATY AFFAIRS PEOPLE*

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20. PROTOCOL A SETS FORTH IN PAINFUL DETAIL THE CONTROL SYSTEM WHICH, ON THE FACE OF IT, WILL PLACE ONEROUS OBLIGATIONS ON THE LIMITED BUREAUCRATIC RESOURCES OF SOME DEVELOPING COUNTRIES. IT IS NOT CLEAR WHETHER THE IMPORT CONTROL MECHANISM IS TO BE OPERATED BY THE COMMISSION OR BY THE MEMBER STATES OR BY BOTH.

21. TITLE II OF PROTOCOL A SETS FORTH THE RULES OF ORIGIN CONTROLS. THESE RULES LEAVE UNILATERAL AND UNLIMITED DISCRETION IN ENFORCEMENT OF THE RULES TO THE COMMUNITY AUTHORITIES; EVEN TO DICTATING THE TECHNICAL SPECIFICATIONS OF THE PAPER UPON WHICH THE RELEVANT

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21. TITLE II OF PROTOCOL A SETS FORTH THE RULES OF ORIGIN CONTROLS. THESE RULES LEAVE UNILATERAL AND UNLIMITED DISCRETION IN ENFORCEMENT OF THE RULES TO THE COMMUNITY AUTHORITIES; EVEN TO DICTATING THE TECHNICAL SPECIFICATIONS OF THE PAPER UPON WHICH THE RELEVANT DOCUMENTS WILL BE PRINTED.

22. PROTOCOL B HAS BEEN DISCUSSED ABOVE IN CONNECTION WITH THE PROVISIONS FOR HAND-LOOMS AND COTTAGE INDUSTRY PRODUCTS.

23. CONCLUSIONS. IT IS TO BE EARNESTLY HOPED THAT THE DRAFT AGREEMENT DISCUSSED ABOVE REPRESENTS AN OPENING NEGOTIATING POSITION. IF, FROM COMMUNITIES' POINT OF VIEW, IT IS NOT NEGOTIABLE, IT WILL CERTAINLY NOT BE ACCEPTABLE TO THE VAST MAJORITY OF EXPORTERS AND, THUS, THE EC'S BILATERAL EFFORT CAN BE EXPECTED TO FAIL. AS IT STANDS, IT IS AN ALMOST COMPLETE DEROGATION OF ALL THE ESSENTIAL FEATURES OF THE MFA. THERE IS NO REFERENCE IN THE AGREEMENT, FOR EXAMPLE, TO THE QUESTION OF MARKET DISRUPTION. MOST PROVISIONS GIVE THE RIGHT OF UNILATERAL ACTION, DETERMINATION OR INTERPRETATION TO THE EC AUTHORITIES, WHICH IF ACCEPTED BY AN EXPORTING COUNTRY WOULD CONSTITUTE A DE FACTO WAIVER OF THAT COUNTRY'S MFA RIGHTS AS WELL AS A WAIVER OF ITS RIGHT OF APPEAL TO THE TSB. MOREOVER, EVEN IF THIS DRAFT AGREEMENT WERE SIGNIFICANTLY LIBERALIZED, THE U.S. BILATERALS WOULD, IN COMPARISON, LOOK LIKE CHARTERS FOR FREE TRADE. THIS SORT OF THING WAS NOT WHAT THE U.S. DEL AND ITS SUPPORTERS OF COM.TEX/W/44 HAD IN MIND WHEN THEY AGREED TO "REASONABLE DEPARTURES." IT IS UNDERSTANDABLE, THEREFORE, WHY THE CIRCULATION OF THIS EC DRAFT TO ITS NEGOTIATING PARTNERS, HAS PRODUCED AN OUTBURST OF INDIGNATION; RIGHTEOUS AND OTHERWISE. ONE FINAL CONCLUSION IS THAT AS LONG AS THIS DOCUMENT HAS ANY VIABILITY, THERE WILL BE NO EXPORTING COUNTRY SUPPORT FOR A W/44 PROTOCOL.

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24. FURTHER COMMENT ON CONVERSATIONS WITH LOCAL EC
AND EXPORTING COUNTRY REPS FOLLOWS SEPTEL. VANDEN HEUVEL

UNQUOTE VANCE

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<< END OF DOCUMENT >>

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Secure: OPEN
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TAGS: ETRD, XT, EEC
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